

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS
OCT 29 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00001

[REDACTED]
[REDACTED]
COUNSEL: NONE

HEARING DESIRED: NO

Applicant requests that her 13 July 1990 bad conduct discharge be upgraded to general or honorable. Applicant's submission is at Exhibit A.

The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinion appear to be based on the evidence of record and have not been rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board, Messrs. David C. Van Gasbeck, Richard A. Peterson, and Jackson A. Hauslein, considered this application on 20 October 1998 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.


DAVID C. VAN GASBECK
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. SAF/MIBR Ltr Forwarding Advisory Opinion



DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

6 MAR 1998

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM(Lt Col Petrow)
112 Luke Avenue, Room 343
Bolling Air Force Base, DC 20332-8000

Correction of Military Records of [REDACTED]

Applicant's request: In an undated application, the applicant requests that her special court-martial punishment of a bad conduct discharge, ordered executed on 3 July 1990, be upgraded to general under honorable conditions. The application **was not** submitted within the three-year limitation provided by 10 U.S.C. 1552(b). The applicant's basis for the untimely submission is that female military members have been encouraged to report incidents of sexual trauma/assault.

Facts of military justice action: On 5 Oct 1989, the applicant (then-Airman First Class) was charged with: making false official statements on 12 and 30 June 1989 to Security Police and Air Force Office of Special Investigations investigators to the effect that her purse and checkbooks had been stolen; passing 23 bad checks on 9 and 10 Jun 1989, totaling \$3005; and, passing six bad checks on 14 June 1989, totaling \$669. On 11 Oct 1989, the charge was referred to a special court-martial, On 20 October 1989 she was tried at Eglin AFB, Florida, where she **was** found guilty in accordance with her pleas. The military judge sentenced the applicant to receive a bad conduct discharge, three months confinement, forfeiture of \$430 pay per month for three months, and reduction to E-1. On 22 Nov 1989, the convening authority approved the sentence **as** adjudged. On 20 Dec 1989 the convening authority remitted the unexecuted portion of the sentence to confinement. On 10 Jan 1990, the Air Force Court of Military Review affirmed the findings and sentence. On 5 Jun 1990, the Court of Military Appeals denied the applicant's petition for review. The bad conduct discharge was ordered executed on 3 Jul 1990.

The applicant's contentions: The applicant contends that her actions resulting in her court-martial were the result of Post Traumatic Stress Disorder (PTSD). She asserts that the PTSD resulted from her having been sexually assaulted. Although she reported the incident, she claims that no action was taken against the individual. The applicant alleges that her superiors made her feel that she was totally responsible for the incident. Her senior reporting officials made her feel cheap and worthless. She believes she is a good person and not responsible for the incident. The applicant asserts that, had senior officials listened and acted at the time of the incident, her integrity would have been restored and her actions different. She holds the Air Force and her assailant totally responsible for her actions of 9 and 10 Jun 1989.

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The applicant also claims that her representation at trial was improper and inadequate. Although at the time of trial she indicated she was satisfied with her defense, she now believes that her entire testimony was given at a time during which she was under mental duress due to the actions and inaction of her superior in relation to the assault.

Discussion: At trial, the military judge explained to the applicant her rights regarding representation. She elected to be represented by [REDACTED], a qualified and certified military trial defense counsel. Before accepting the applicant's pleas of guilty and after explaining her rights to a trial, the military judge inquired as to whether she was satisfied with her defense counsel to which she responded affirmatively. The military judge then made a thorough inquiry into the facts and circumstances surrounding the charges. He discussed the facts as provided in a Stipulation of Fact after ascertaining that the applicant had read and agreed to its contents. The military judge then explained the elements of the offenses charged and asked the applicant to explain what happened in her own words. After giving the applicant an opportunity to discuss the matter once more with her attorney, the applicant assured the judge that she still intended to plead guilty. During the sentencing portion of the trial, the applicant made an unsworn statement in which she described a strict upbringing that prevented her from developing a sense of responsibility. No mention was made of any sexual assault. Her defense counsel then made a cogent sentencing argument.

The applicant has not provided any justifiable basis for the granting of her request. The offenses were serious and constituted a departure from the standards expected of Air Force members. The applicant's desire for a general discharge must be carefully balanced against the need for maintaining good order and discipline in the military. Considering the nature of the offense, the punishment of a bad conduct discharge was not overly severe. In conclusion, the applicant's court-martial was properly convened and conducted and had jurisdiction over the applicant and the offense. The applicant's conviction and sentence were considered during clemency and on appeal and ultimately upheld. The applicant has not provided the Board with any information, which warrants reversing the informed decision of the military judge, the convening authority, or the appellate courts.

Recommendation: After a review of the available records, I conclude there are no legal errors requiring corrective action and granting the applicant's request is not warranted. The applicant's court-martial and resulting punishment were properly executed and legally sufficient. I recommend that the applicant's request be denied.

[REDACTED]
[REDACTED]
Associate Chief, Military Justice Division
Air Force Legal Services Agency